IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9130 of 2001

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NANHE SHIV SHANKAR DUBEY & 4 - Petitioner(s)

Versus

UDHNA UDHYOG NAGAR SAHKARI SANGH LTD - Respondent(s)

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Appearance :

MR BS MISHRA for Petitioner(s) : 1 - 5.

NANAVATI ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/01/2006

ORAL JUDGMENT

1. This petition is directed against the order

dated 8th November 2000 passed by the Labour Court, Surat, in Reference (LCS) No.12/90, whereby the Labour Court has rejected the reference.

2. The short facts of the case are that the petitioners are employees of the respondent Society. They raised a dispute through their Union for conferring them permanency and the benefits like wages, dearness allowance, etc. with effect from 1.1.1989. The Labour Court, after hearing the parties, rejected the said reference by order dated 8th November 2000, which is challenged in this petition.

3. Mr. Mishra, learned counsel for the petitioners submitted that the petitioners have worked for long years and therefore they are entitled for permanency. He submitted that in spite of their lengthy service they are not granted benefit of leave and other statutory benefits being extended to the permanent employees.

3.1 Mr. Misha contended that the original Union

which has represented the case of the petitioners, in connivance with the respondent society, did not represent their case properly. He further contended that though certain documents, which are within the custody of the respondent, were requested to be produced, the Labour Court has failed to direct the respondent to produce the same on record. Mr. Mishra further contended that discriminatory treatment has been meted out to the petitioners and therefore, the Labour Court ought to have entertained the reference.

4. Learned counsel for the respondent submitted that the petitioners herein cannot be made permanent, but they are paid statutory payment of minimum wages Act, provident fund, payment under ESI Act and other statutory payment. He submitted that looking to the set up of the society and the work available the petitioners cannot be made permanent and the Labour Court has rightly rejected the reference.

5. As a result of hearing it is found that though the petitioners are not permanent workmen, they are being paid statutory payment of minimum wages,

provident fund, etc. Only leave and other benefits are not given as are being given to the permanent employees. After considering the evidence on record the Labour Court has recorded a finding that looking to the need and work of the cooperative society, majority of the workmen are made permanent and some of the workers are retained on the basis of temporary status since there is fluctuation in the business of the society. The finding is that since the cement division was closed it was not possible for the respondent to make permanent all the employees.

5.1 In short the Labour Court has considered all the facts and circumstances of the case including that of type of employment, work available with the respondent society, etc. I am of the view that when there is no permanent work to give to temporary employee and if the society is not in a financial condition to meet with such liabilities, it would not be proper to increase the burden by making even the temporary employee permanent, which may even lead to financial crisis and closure of the unit. I am, therefore, in complete agreement with the reasonings

adopted and findings arrived at by the Labour Court and no case is made out to cause interference in this petition.

6.0 Mr. Mishra has relied upon a decision of the supreme Court in the case of Chief Conservator of Forests V. J.M. Kondhare, reported in AIR 1996 SC 2898, wherein it is held that permanency cannot be refused on grounds of financial strain of State exchequer. In the said decision the Supreme Court has given direction to the State Government to absorb the casual worker who are working with the State Government. In the present case the respondent is not a State within the meaning of Article 12 of the Constitution and therefore the said ratio will not apply in the present case. Even otherwise the Labour Court has recorded a finding that looking to the work and the profit of the respondent society, majority of the workmen are made permanent and some of the workers are retained on the basis of temporary status since there is fluctuation in the business of the society. Therefore, the aforesaid decision would not be applicable to the facts of the present case.

6.1 Mr. Mishra has also relied upon a decision in the case of Gujarat Agricultural University V. Rathod Labhu Bechar, reported in AIR 2001 SC 706 wherein the Supreme Court has laid down guidelines for regularization of daily wage workers so that they were not exploited. In the present case 2/3rd employees were made permanent. Other persons were not made permanent since the business of cement was closed. Therefore, I am of the view that no assistance can be taken from the aforesaid decision of the Supreme Court.

6.2 Mr. Mishra has also relied upon a decision in the case of Grih Kalyan Kendra Workers' Union V. Union of India, reported in AIR 1991 SC 1173, wherein it is held that principle of equal pay for equal work is applicable with full vigour to establishment which is instrumentality of State. In the said case the Supreme Court held that the government cannot make a distinction among two classes of employees. In the present case all statutory dues are paid to the petitioners which has been admitted by the

petitioners in their cross examination. In that view of the matter the ratio laid down in the decision will not be of any assistance to the petitioners.

6.3 Mr. Mishra has also relied upon a decision in the case of Echjay Industries Pvt. Ltd. V. Shri Mahavirsinh Shivubha, reported in 1994(1)GCD 537 (Guj)which dealt with the jurisdiction of the Labour Court in calling upon employer to produce documents and oral evidence. In the present case, the application for production of such evidence was rejected by the Labour Court and the petitioners have not challenged the said order and therefore the same has attained finality. It is required to be noted that the petitioners could have procured certified copy from competent authority under the Cooperative Societies act where the respondent is required to produce relevant records by way of annual report and audited reports. Therefore the petitioners cannot place reliance upon the aforesaid decision.

7. In the premises aforesaid, I do not find any merits in the present petition. This petition is,

therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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